

## Special Resolution Questions and Responses.

1. The resolution does not provide for maintenance, repairs and replacement of most privately owned external items and surfaces including;
  - windows and frames, Walls, not windows and frames. All townhouse window frames are aluminium.
  - picket fences, **No - separate issue**
  - picket gates, **No – separate issue**
  - fascia boards, **Part of roof**
  - eaves, **Part of roof**
  - carparking space bitumen surfaces, **No - same as for heritage**
  - carparking space line marking and numbering, **No – same as for heritage**
  - veranda posts and veranda supporting structures, **Yes - part of walls and roof structure**
  - foundations and concrete slabs, **No - same as heritage**
  - roof vents, **Part of roof**
  - flashing and waterproofing, **Part of roof**
  - doors (external painting), **No - walls only**
  - skylights (including waterproofing), **Part of roof**
  - pergolas (including laserlite), **No - attachment to wall, not part of wall themselves**
  - carports, **Same as for heritage**
  - carport lighting, **Same as for heritage**
  - steel fences and hand rails, **No – separate issue**
  - steel gates, **No – separate issue**
  - underground stormwater drains and pits, **If issue caused or fault of common property**
  - concrete steps, **No - not if encased in private property**
  - retaining walls (both timber and concrete) **Not if encased in private property. 50/50 if on boundary**
2. Will all of the items which I have listed above be added to the proposed resolution, and if not then why not?

**As above - they are either included or excluded for reason identified above. The resolution specifically covers roofs, walls, spouting and downpipes. It cannot be any clearer than that.**

3. The proposed resolution makes no mention of when or how frequently “roof, gutters, downpipes, outer walls or structural walls” will be maintained by the OC.  
When and how often will “roof, gutters, downpipes, outer walls or structural walls” of the 100 townhouses and 3 gatehouses be maintained by the OC?

**That is determined in the LTMP and according to an analysis of wear and tear and need - as determined by the COM. Same for the entire property.**

4. The proposed resolution makes no mention of what quality standard the OC will apply to the “roof, gutters, downpipes, outer walls or structural walls”.  
Will the OC guarantee that materials and workmanship of equal or superior quality shall be used for maintenance, repairs and replacement of the “roof, gutters, downpipes, outer walls or structural walls”?

**Like for like and fit for purpose and long life would be the general answer to this. The COM will always try and get the best quality work done, with the best possible and most suitable materials.**

The OC will always work to ensure that materials and workmanship is equal to or preferably better in quality.

5. Regardless of the outcome of the ballot, will the Owners corporation review the apportionment of costs and benefits for each lot and adjust the Owners Corporation lot liabilities and OC fees for each lot if need be, to ensure that each lot owner pays a fair and reasonable amount for the maintenance and services which they receive from the Owners Corporation?

No - the OC could never do this. It would require a 100% absolute resolution of all lot owners for the OC to be able to change the schedule of liabilities. On the other hand, one or a group of lot owners can initiate action in VCAT to try and bring this about.

6. If the proposed resolution fails to pass or if the resolution passes and some lot owners believe there is a remaining inequity in the apportionment of costs and benefits, then will a lot owner or a group of lot owners be able to initiate legal action against the Owners Corporation and obtain orders from VCAT to adjust their lot liabilities? How likely is it that such legal action would succeed?

You would need to get a legal opinion about this. VCAT would evaluate the total collection of OC fees and would need to determine if they were fair and equitable in terms of lot liability and lot entitlement.

7. A few weeks ago I received a document from a Richard Downing who argued that the townhouses should not receive equitable treatment in terms of maintenance fund expenditure because 'the heritage units contribute more to the fund'. Can the position please be clarified? Am I right in believing that the heritage units contribute more in total because there are more heritage units? Is it also true that the contribution from a heritage unit is the same as the contribution from a townhouse if they both have the same valuation?

Yes, you are correct. They contribute more in absolute dollars because there are more of them. On a comparison basis per lot – of townhouses and gatehouses vs heritage apartments they pay very comparable OC fee levels. If you take all 2 bedroom apartments, for example, across the property - townhouse and heritage - the lot liabilities thus levels of OC fees paid are pretty much identical. The lot liability formula was calculated based on the original sale price.

8. What is the cost of funding this resolution process so far and the budget for this process overall?

Approximately \$1,500.00 has been spent on legal advice. That is the total cost of the process to date.

9. Who will manage the voting and who will have access to the way the voting is going during the voting period?

MICM.

10. How are the breaches of the Owners Corporation act being dealt with?

Not sure how this relates to the matter at hand. General breaches are dealt with by the BM and MICM.

11. The COM has assured owners in the letter that there will be no impact on the maintenance fund. How was this assessed and how long is this guarantee for?

The maintenance fund already includes the townhouses; therefore funds are already being accumulated for the maintenance works required. The Committee cannot guarantee the fees as these are subject to change in line with the maintenance plan.

12. The current maintenance fund is until 2031. Why is the COM seeking to review this plan next year (after only 5 years) if they do not need more money?

In accordance with the OC Act, the LTMP should have a 10-year projection. Therefore, the plan needs to be reviewed regularly. This is standard practice.

13. There are significant potential costs listed in the letters, how will these be funded within the current budget and when have these works been scheduled/planned for?

Maintenance is accounted for as part of the LTMP and is scheduled and planned for as and when required.

14. The COM has assured owners that their proposal will not raise the Owners Corporation fees. How was this assessed and how long is this guarantee for?

This proposal alone will not raise OC fees. The LTMP has been established and is funded as per the formula derived in 2017. Townhouse maintenance is included in this plan. The proposal will not have any impact on the operating budget. The greatest (clear and present) danger to OC fees is the insurance premium, which currently eats up over 20% of our budget. In terms of the length of the guarantee that will totally depend on the maintenance needs of Willsmere going into the future. The most expensive budget items in terms of maintenance are heritage roof repairs - \$110,000 in 2019 alone – painting of the heritage buildings and high-level spouting and downpipe work on the heritage buildings. The townhouse should not require roof replacement for at least another 15 -20 years – particularly if they are well maintained by the OC. The townhouses also won't need painting for many years and their spouting and downpipes are generally in good condition. The OC fees are subject to change based on the needs of the OC. They are also subject to change based on the LTMP.

15. Will the maintenance/repairs/rebuilds on these private properties be funded through special levies imposed on lot owners?

No – through money raised in the LTMP. There are no specific works planned therefore the cost of any maintenance is not known and no special levies are planned.

16. Why is this being pushed through with such haste, making it impossible for owners to obtain unbiased, independent advice?

This issue was first raised in 1995/96. It was again raised in 2009. It is not being rushed through in haste. We want it resolved during the term of this COM. We want to understand the parameters of how to approach the review of the LTMP next year.

17. When significant works are completed on private properties, will the benefit principle apply and the cost be charged to the owner (If not, why not. If so, why are we doing this and how will these funds be recovered considering COM correspondence states that they expect owners may refuse to pay.

The passing of the special resolution would enable the OC to carry out maintenance to the roofs and walls of all properties in the estate. All lot owners contribute to the maintenance fund, the from the maintenance fund would be used to carry out works. If there is a scenario whereby the benefit principle would apply this could still be used.

18. If the majority of repairs onsite are now funded by the COM, will these be managed by the building manager and what impact is this expected to have on his workload? Will this increase our costs for having a building manager? (if so, by how much. If not, what is this based on and who provided that advice/assurance)

Yes, all eligible repairs are funded by the OC (and always have been) and the Building Manager has always managed this in his workload. If the resolution fails, it is possible that his workload would increase, as he would need to continually negotiate with private owners to complete the work themselves, to work together on projects and all repairs would have to be costed and approved by the owners of private property and this may well involve extensive consultation and negotiation.

19. Why does the COM think that owners will fail to maintain their private property and let it fall into disrepair?

Not all owners would. Some would. Some owners are investors. Some investors are meticulous and others not so. In a group of 8 townhouses it would only take one owner, for example, who does not agree with a roof replacement to hold things up or sabotage a project.

20. How did the COM come to the conclusion the community was better off paying to maintain and repair someone else's private property because that person had let that it fall into disrepair, rather than compelling owners (if needed) to maintain their property under the current rules?

It is one thing to compel owners to repair their properties, but it's another thing doing it. Owners can put up barriers – to communication, to funding, to taking legal action to stop it. The other important point here is that the owners already pay proportionate OC fees - across all lots in the property.

It is also much more efficient to have one body and one manager overseeing all maintenance and repair in Willsmere to ensure consistency.

21. Will this resolution be retrospective, can owners recoup costs for previous repairs/maintenance/improvements?

No. Repairs and maintenance to the external walls and roofs have previously largely been funded by the OC in any case.

22. Will previous poor work be fixed or eligible to be fixed - e.g. poorly executed NBN cabling, cheap window installations.

No – that continues to be private business.

23. Where townhouse owners have attached things to walls and this has damaged the wall, will the COM fund fixing this?

If they have done this the OC would ask for them to contribute to the repair costs. The OC won't be repairing private rain covers in backyards or other non-original attachments. This is an example of where the benefit principle would be applied.

24. The COM letter includes a number of significant works they propose to cover, has a plan of works been brought together and when will this be provided to owners?

The works will be related to roofs, walls, spouting and downpipes, including painting. That has been and will be consistent across the property. There is no plan to carry out immediate works, works will be carried out when required and in line with the LTMP.

25. Are there expectations to get property to a minimum standard before the COM commence repairing the properties? (The correspondence from the COM makes multiple reference to properties being in disrepair)

There is currently much more work to do on the heritage buildings than any other buildings on the property. High level roof and spouting and downpipe repair and replacement is our next major project.

26. Will there be a change on premiums (and has this been confirmed with the insurance provider)?

Not due to this resolution. If anything in the long run, they will go down. Chubb are concerned that we need to have a pro-active and ongoing plan to repair and maintain all our buildings in Willsmere as all buildings are covered under the same policy. An insurance consultant recently advised the COM that insurance risk rises significantly without a co-ordinated and pro-active plan.

27. The letter from the COM states that our insurance is impacted where owners' fail to maintain their private property and their private property is then damaged as a result of this. How is the insurance and premiums impacted by this and who provided this advice?

Merv Harris (Insurance Consultant) provided this advice at a recent forum – about 25 owners attended this online forum. Failure to maintain = increased risk of claims and increased claims lead to higher premiums. Merv says this is well proven.

28. The advice provided in the letter sent to owners leads to significant financial consequences for owners, is this also offered as financial advice that we should rely on? (There is no disclaimer to suggest otherwise).

It is unclear where "significant financial consequences" are mentioned. No financial advice has been provided.

What we do say is that if the resolution fails, some owners may lodge a VCAT case to ask for a lot liability reclassification. If this succeeds, and that is possible, the OC fee liabilities may change.

29. The most recent letter from the COM implies that the legal advice was inadequate / wrong – how can we rely on the latest advice?

It wasn't wrong. It was technically 100% correct. However, we continued to work with the solicitor to tailor a solution that would have a much higher chance of success and result in no further legal costs to achieve a suitable outcome.

30. What evidence does the COM have that to support the claims that maintaining private property was the intention of the original subdivision and when will this evidence be provided to lot owners.

The original Conservation Management Plan is clear evidence – townhouse maintenance and repair were in every cyclic phase. The permit to build was conditional on this plan. Every subsequent Long Term Maintenance Plan has Townhouse maintenance and repair fully included. Every COM to date has supported it. Keith Bayliss will provide more on this tonight.

31. Why did the COM see fit to commence and fund this process? Was this a requirement or obligation?

In order to be able to provide future COM's with a clear understanding of their scope and the limitations of their powers we needed to do this. It is not fair that members of the COM are threatened with legal action at times for continuing to maintain properties as per the LTMP. This matter first emerged in 1995 and it has been an elephant in the room. It's time we sorted out the elephant.

32. Was the COM unanimous pursuing this proposal?

Every COM member voted to obtain the legal opinion. Once the opinion was obtained and we also discovered that 54 heritage properties also had private property one COM member would not accept this advice and voted against the resolution. One other abstained. We sought further advice to reconfirm that the 54 apartments had private walls and verandas, and this was confirmed by the original architect who wrote the plan of subdivision.

33. Is the COM unanimous in the position they are advocating to the community?

Each COM member has supported the notion that Willsmere should be managed as one community with the OC maintaining all the buildings.

34. Is it appropriate for the COM to finance and pursue the whims/desires for a small numbers of lot owners over the benefit to the whole community?

Whims and desires are not financed. Maintenance is financed. We recently finance the replacement of steps and landings for 13 heritage apartments. This benefits 13 lots owners exclusively, but we do not see this as a whim. Most spouting and downpipe in Willsmere services multiple apartments and townhouses. Roofs cross multiple lots.

As a member of the Owners Corporation there will always be expenditure that benefits some more than others, this is the nature of communal living. Overall, every lot owner benefits from a well-maintained property.

35. Did those on the COM who personally benefit financially from this excuse themselves from voting on progressing this?

Every lot owner benefits in some way from a well-maintained Owners Corporation. If this was the case no lot owner would be able to vote on this motion.

36. The letter references multiple pieces of legal advice on this matter obtained in the past. If the COM already had advice on this issue, why did they seek and fund further advice?

The advice from 1995 could not be relied upon in 2021. Since 1995 the Owners Corporation Act 2006 was brought in.

37. How did the COM manage the issues with personal gain / conflict of interest?

It did not have to. The Owners Corporation is following the legal advice provided by CLP Lawyers.

38. Will there be changes to the rules, for example, are townhouse owners still able to attach things to walls and will there be rules about using professionals for installations, to avoid further damage, and who will pay for these professional installations?

No change to the rules needed. That would require another special resolution anyhow.

39. Will there be a requirement to remove items attached to walls, to avoid further damage that needs to be fixed later (and funded by the community)?

If an owner fixes something to a wall and causes damage they should fund the cost of repair and the OC will require this.

40. If this resolution is voted in favour, what right of appeal is there?

25% or more of lot owners have the right to petition the result within 28 days of the resolution being passed.

42. If this resolution is voted in favour, what grievance processes are available?

As noted above.

43. If this is voted down and the "group of lot owners" the COM has stated will take the community to VCAT proceeds with this, who will lead and fund the defence for the community?

The Owners Corporation Committee will need to seek legal advice should this arise.

44. Can the CoM please explicitly clarify the inclusion/exclusion of: The rear verandas of the townhouses (facing the access roads), Skylights, Fences.

Rear verandahs – no. Fences – no change in policy. Skylights – part of the roofs.

45. I would also appreciate a reminder at the forum to everyone that:

(A) the gardens in front of the townhouses facing the heritage buildings are not private. They must not be modified without written permission. These are maintained by the gardeners.

**Absolutely. They are common property.**

(45B) All residents have an obligation to keep their properties neat and tidy at all times and to abide by rules that apply to everyone.

**Yes – as always.**

46. Please clarify paragraph 5 ‘... must be noted that Owners Corporation (OC) will be required to seek the approval of Owners when works are required to be carried out to private property. Given the collegiate nature of Willsmere and precedence, the Committee does not foresee this as an issue.’ Would this not be cumbersome administratively that is owners approval are required each time a repair, maintenance or replace is required for private property. All owners approval to grant permission to OC. It will hinder and delay maintenance work.

**We always seek owner’s permission to carry out works involving their properties. It’s standard procedure. What would be a real challenge – if this resolution fails – would be to seek permission from owners of private lots on the basis that they would have to pay for it each and every time.**

47. Some townhouses have a backyard portico to shield the rain belting onto the door. Is this portico part of the wall structure of the private property? Please clarify.

**Not covered. Not a core part of the wall.**

48. Since the heritage apartments require, generally, more upkeep structurally, due to the fact that they are significantly older in construction, should not the lot owners of these apartments to be required to contribute more money (proportionately) towards the maintenance of external walls (be they private or common), ceiling/floors (which are the boundaries between properties) and any verandas?

**This could be argued, but a redistribution of lot liabilities by the OC requires a 100% resolution. The best way through is the approach we are taking, which says we all chip in and everything is maintained. If the resolution fails, there will almost certainly be a legal case lodged to challenge what you are claiming.**

48. On the diagram provided on page 2 of the special resolution information sent on the 22/10/21, structural walls between the townhouses are shown to be private property. Are the front and rear walls of the property as well as the roofs and skylights also deemed as private property.

**Yes. As with the walls and verandas of the 54 heritage apartments and most of the gatehouses walls.**

49. Pursuant to the above question, regardless of whether the front and rear walls and roofs of the property are deemed to be private, will the maintenance of the walls include the repair of broken windows and wiring for services such as NBN? Will any decisions by the lot owners, to change or alter the walls and roofs, for instance the addition of solar panels on the roof, require the consideration of the Willsmere Committee of Management?

The plan of subdivision is not changing – the walls continue to be private and the same conditions will apply to that situation as do now.

50. If the resolution is passed, will this have any bearing on the costs and application of the insurance policy, in regard to individual lots. If so, how?

No.